REMARKS

Reconsideration of the application is requested.

Claims 1-6, 8-13 and 15-27 remain in the application. Claims 1-6, 8-13 and 15-27 are subject to examination. Claim 13 has been amended. Claims 7 and 14 were previously canceled.

In item 8 on pages 4-7 of the above-identified Office Action, claims 13, 22-24 and 26 have been rejected as being obvious over the article entitled "Choices for Conservative Savers by Singletary" (hereinafter Singletary) in view of U.S. patent publication No. 2003/0065602 to Yip (hereinafter Yip) and further in view of the article titled "Bankrate" (hereinafter Bankrate) under 35 U.S.C. § 103.

Singletary focuses on laddering CDs in order to maximize ones return from CDs as noted in paragraphs 0003, 0013. Initially a one-year CD, a two-year CD, a three-year CD, a four-year CD and a five-year CD are purchased. It is the goal of Singletary that all of the CDs eventually become five year CDs thus giving the maximum rate of return. Singletary does not concentrate on distribution of funds

from the investment portfolio. Singletary does mention that money-market accounts should be used for money you may need in the short term [0016]. Singletary does identify the one-year CD as the first CD to be exhausted or flipped to a new five-year CD if it is not exhausted [0013]. Singletary does not concentrate on distribution of funds from the investment portfolio.

Bankrate also teaches a CD laddering scheme similar to Singletary.

As noted by the Examiner, Yip teaches an investment pool containing equities. The Examiner believes that it would be logical to combine the teachings of Yip with Singletary to read on the invention of the instant application.

First, it is questioned how the combination recited by the Examiner would be performed. More specifically, how would one ladder equities as taught in Singletary? In Singletary, the end result would be to own one and only one equity (e.g. the 5 year CD).

Second, claim 13 has been amended to recite the specific contents of the investment pools being chosen from various

investment instruments. Support for the changes to claim 13 is found on page 23 of the specification. It is noted that Singletary, Yip and Bankrate do not teach such a complete list of investment instruments.

Third, the Examiner states that Bankrate teaches "thus allowing the assets in the second pool through the sixth pool to experience a compounding effect and tax-efficiency by not being distributed until after the first investment pool is exhausted"; "converting assets of the second investment pool into a seventh investment pool having the assumed average first rate of return when the first investment pool is exhausted due to the distribution"; and "distributing the assets from the seventh investment pool when assets in the first investment pool are exhausted (see at least PDF; paragraph 4)". Paragraphs 1-7 of Bankrate recites

> Laddering a CD portfolio is a lot like dollar-cost averaging when you buy stocks. You don't invest all your CD money at one low rate of return.
>
> You also are never more than a year away from at least some of your money.
>
> Here's how laddering CDs works:
>
> You go to the bank with $25,000 and buy a $5,000 one-year CD, a $5,000 two-year CD and so on until your last $5,000 buys you a five-year CD. Each year is a rung on the ladder. When the one-year CD matures, you reinvest that money in a five-year CD because by that

time your five-year CD has four years left until it matures. As each year's CD comes due, you roll it into a five-year CD.

Jason Flurry, a certified financial planner and president of Legacy Partners Financial Group, Woodstock, Ga., has put together an example of how laddering is better than putting all your money into one particular maturity.

"The laddered CD program helps give you more liquidity while offering a more stable source of income," says Flurry. "Consider what would have happened to two hypothetical investors who invested $50,000."

Investor A bought a $50,000 one-year CD and reinvested in one-year CDs every year thereafter at the following rates:

Simply put, we do not understand how Bankrate teaches any of the features recited by the Examiner. Applicant respectfully requests the Examiner to be more specific as we do not follow the Examiner's logic in these features recited in claim 13. More specifically, where does Bankrate teach "converting assets of the second investment pool into a seventh investment pool having the assumed average first rate of return when the first investment pool is exhausted due to the distribution"; and "distributing the assets from the seventh investment pool when assets in the first investment pool are exhausted".

In item 9 on pages 7-16 of the above-identified Office Action, claims 1-7, 14-21, 25 and 27 have been rejected as

being obvious over the article titled "Choices for Conservative Savers" by Singletary (hereinafter Singletary) in view of U.S. patent publication No. 2003/0065602 to Yip (hereinafter Yip), further in view of U.S. patent publication No. 2002/0174045 to Arena et al. (hereinafter Arena), and finally in view of the article titled "Bankrate" (hereinafter Bankrate) under 35 U.S.C. § 103.

The Examiner states that Singletary does not teach

> converting assets of the second investment pool into a fourth investment pool (seventh investment pool) having the assumed average first rate of return when the first investment pool is exhausted (emphasis added)

as recited in claim 1 or amended claim 13 of the instant application.

The Examiner relies on Arena for teaching this feature. Arena teaches a rebalancing strategy configured to minimize transaction costs and to balance the account to the previously targeted risk level. Arena does not teach the distribution of funds from the investment portfolio, rather Arena teaches redistribution within the portfolio when risk levels have changed due to balances in the various investment pools changing over time.

The Examiner states that it would be obvious to rebalance the assets of Singletary using the teachings of Arena. It is noted that the heart or overall goal of Singletary is to get all of the investments to be five-year CDs in order to get the maximum CD rate. However, to rebalance, the Examiner is suggesting that Singletary would now rebalance and buy 1, 2, 3, and 4 year CDs, in addition to the five-year CD. Clearly, Singletary teaches **directly against** such a rebalancing. Therefore one cannot incorporate the teachings of Arena into Singletary, as the proposed combination changes the principle operation of the Singletary reference. As noted in MPEP 2143.01, it is impermissible to recite a combination that destroys the principle operation of the main reference. The Examiner states that Singletary teaches earning "the greatest rate of return" and that the rebalancing taught in Arena is compatible. In order to obtain the greatest rate of return, all of the investments must be in one investment type (that providing the greatest return e.g. the five-year CD). However, Arena clearly teaches against this, as rebalancing lowers the rate of return in exchange for greater diversity and less risk. Therefore, Arena teaches purchasing the lower risk CDs, e.g. a one or two year CD.

By the Examiner's own logic, Singletary and Arena are incompatible because Arena does not teach obtaining the greatest return. Arena teaches a clear risk - return balance.

Arena teaches rebalancing when the risk levels are no longer at a desired level. There are no teachings in Arena that teaches rebalancing when a given pool is exhausted. Neither Yip nor Singletary teach this feature either. Claim 1 recites the "rebalancing" only after the first pool is exhausted. Arena does not teach rebalancing due to exhaustion of a given fund (investment pool), rather rebalancing is performed only after a risk level change has occurred. For example, Arena teaches that the rebalancing occurs when the portfolio mix violates an asset allocation ratio such as 60/40 stocks/bonds (see 0093-0095). If the allocation ratio is violated, a rebalancing occurs in that portfolio. Please note that the rebalancing is done portfolio wide. There is no teaching to rebalance only a subpart of the portfolio to create one investment pool to be exhausted first as recited in the claim 1 of the instant application.

The Examiner states that Yip refers to rebalancing

clusters/pools of investments based on either percentage or events by using rules. More specifically, Yip rebalances on a periodic basis or when an asset exceeds a certain proportion or upon occurrence of any particular recurring event [0037]. In addition paragraph [0052] states that rebalancing can occur due to a preselected rule. The Examiner states that "the rule could be set to rebalance after the event of the first investment pool being exhausted". First, Yip does not teach the exhaustion of a designated pool. Second, Yip does not teach rebalancing after the exhaustion of a designated pool. The Examiner's statement is impermissible hindsight in which he states that the rule of the instant application could be a reasonable rule for Yip to follow. The Examiner is clearly misunderstands an important covenant of patent law that the prior art must show the feature at a minimal. Yip does not teach converting assets of the second investment pool into a fourth investment pool (seventh investment pool) having the assumed average first rate of return when the first investment pool is exhausted.

Most if not all inventions arise from a combination of old elements. See In re Rouffet, 149 F.3d 1350, 1357, 47

USPQ2d 1453,1457 (Fed. Cir. 1998). Thus, every element of a claimed invention may often be found in the prior art. See id. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. See id. Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the appellant. See In re Dance, 160 F.3d 1339, 1343, 48 USPQ2d 163.5, 1637 (Fed. Cir. 1998); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125,1127 (Fed. Cir. 1984).

It is further noted that the invention of the instant application does not do a portfolio wide rebalancing act as taught in Arena or Yip. Rather in the instant application the "rebalancing" is merely localized to one other investment pool. It is even further noted that following the logic of Yip or Arena the rebalancing would occur long before the first pool is exhausted as the lowering value of the first investment pool would trigger an automatic rebalancing long before the first investment pool is exhausted.

The invention of the instant application, hereinafter TEDI model, does incorporate a laddering strategy using various investment instruments (not just CDs) designed to add more risk as the time horizon increases (higher rates of returns for the longer term investment pools). The TEDI model emphasizes tax minimization by withdrawing principal and interest from funds from one pool and only one pool until all monies from that pool are exhausted. Of course that pool is designed to be the first to be exhausted. The other pools are designed knowing that they will not have cash withdraws for a given period of time. In the prior art references there is no discussion of tax minimization and/or efficiency in their processes, by one pool being designated to be exhausted first and the other pools are not concerned with distributions.

In summary, there are no teachings in Arena, Yip, Bankrate or Singletary to rebalance the investment pools by "converting assets of the second investment pool into a fourth investment pool (seventh investment pool) having the assumed average first rate of return only after the first investment pool is exhausted" (emphasis added).

Applicant agrees that the concept of staggering or laddering pools of money is well known in the art. However, the invention of the instant application, the TEDI model, builds on the concept of laddering pools of money. The differentiator is basically the concept of principal exhaustion from one pool of monies at a time while the other pools can experience the compounding effect as well as tax-efficiency of not having to distribute taxable income until that pool of monies is called upon.

In item 10 on pages 16-18 of the above-identified Office Action, claims 11 and 12 have been rejected as being obvious over the article entitled "Choices for Conservative Savers" by Singletary (hereinafter Singletary) in view of U.S. patent publication No. 2002/0174045 to Arena et al. (hereinafter Arena) under 35 U.S.C. § 103.

Regarding claim 11 of the instant application, claim 11 recites in part:

> designating a first investment pool of the investment pools to have an assumed average first rate of return being a lowest rate of return of all the investment pools and from which distributions are first

withdrawn from, as needed, before withdrawing funds from any of the other investment pools; and

converting at least part of the assets of a second investment pool having an assumed average second rate of return being a next lowest rate of return into a new investment pool when the first investment pool is exhausted due to distributions, the assets of the new investment pool being invested at a same assumed average rate of return as the first investment pool and being available for distribution.

Simply put, Arena does not teach rebalancing when a given pool is exhausted. In addition, Arena does not teach rebalancing of only the second investment pool for recreating a new exhaustion pool. Rather Arena dictates a portfolio wide rebalancing.

For the above stated reasons, the Examiner is respectfully requested to withdraw the rejection.

In item 11 on pages 18-20 of the above-identified Office Action, claims 8-10 have been rejected as being obvious over the article entitled "Choices for Conservative Savers" by Singletary (hereinafter Singletary) in view of U.S. patent publication No. 2002/0174045 to Yip (hereinafter Yip), in view of U.S. patent publication No. 2002/0174045 to Arena et al. (hereinafter Arena) and

further in view of U.S. patent publication No. 2004/0088236 to Manning (hereinafter Manning) under 35 U.S.C. § 103.

Manning teaches a computer program in which the user enters investments with various levels of return based on historical data for creating a customized portfolio. The user also enters a time span of years in which the investments are allowed to grow without distributions. The investor can also enter the year at which withdrawals begin and the amount of money to be withdrawn. From this data, the software determines how many years the investor will be able to withdraw given funds before the portfolio is exhausted [0035].

However, Manning does not teach designating a first investment pool, out of a plurality of other investment pools, in which the funds in the first investment pool are at least three times the annual amount to be withdrawn. Manning does not distinguish which investment pool is to be withdrawn from first. Simply put, the Examiner fails to show a portfolio having a designated investment pool in which funds are first distributed from.

The Examiner further states with regard to claim 9 that Arena teaches putting all remaining assets in the third investment pool. This is sheer nonsense. Arena teaches rebalancing. Arena does not teach initial allocation and certainly not all the assets in the third investment pool that are not needed for short to medium term cash needs.

It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claims 1, 11 or 13. Claims 1, 11 and 13 are, therefore, believed to be patentable over the art. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claim 1, 11 or 13.

In view of the foregoing, reconsideration and allowance of claims 1-6, 8-13 and 15-27 are solicited.

Please charge any other fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account

of Lerner Greenberg Stemer LLP, No. 12-1099.

Respectfully submitted,

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